

Defendant.

[illegible]

Civil Action No. 06-65

MEMORANDUM OPINION and ORDER

This case was removed here on January 13, 2006. (Docket No. 1). On March 1, 2006, Plaintiff filed an Amended Complaint to remove claims related to HCR Manor Care. (Docket No. 7). Plaintiff's counsel filed the Amended Complaint removing all claims related to The Greenery Specialty Care Center ("The Greenery") instead of claims related to HCR Manor Care. *Compare, id; with* Docket No. 1. Sometime between March 1, 2006, when the Amended Complaint was filed and October 13, 2006, the parties discussed dismissing the claims relating to HCR Manor Care. On October 13, 2006, the parties filed a Stipulation for Dismissal of all claims relating to HCR Manor Care. (Docket No. 21). As a result, Plaintiff's counsel should have known,

at the very latest, by October 13, 2006, that he incorrectly removed the wrong claims from the Amended Complaint.

Discovery closed on November 15, 2006. The parties have filed Cross-Motions for Summary Judgment on December 15, 2006. (Docket Nos. 30 and 32). In Defendant's supporting Brief, Defendant stated that Plaintiff removed his claims related to The Greenery from his Amended Complaint. (Docket No. 33, p. 9). The parties have filed their Responsive Briefs. (Docket Nos. 38 and 41). The Motions are now ripe for review.

On January 22, 2006, Plaintiff filed a Motion for Leave to File a Second Amended Complaint to allege claims relating to Plaintiff's care at The Greenery. (Docket No. 43). Therein, counsel for Plaintiff states that he did not discover that the wrong facility had been removed until January 8, 2007. (Docket No. 43, ¶7). Plaintiff did not file a Brief with his Motion, nor did Plaintiff attach a copy of the Proposed Amended Complaint. Defendant responded thereto. (Docket Nos. 45-46).

THEREFORE, this 7th day of February, 2007, after a review of the same, it is ordered that Plaintiff's Motion for Leave (Docket No. 43) is denied for the following reasons:

1. There is undue delay on the part of Plaintiff's counsel for brining this Motion, which should have been discovered, at the very latest, by October 13, 2006, when the stipulation was filed, and prior to the close of discovery. *See, Foman v. Davis*, 371 U.S. 178, 182 (1962).
2. Plaintiff's counsel has failed to attach a copy of the proposed Second Amended Complaint. *See, Lake v. Arnold*, 232 F.3d 360, 373-74 (3d Cir. 2000).

3. Plaintiff has failed to file a brief in connection with his Motion for Leave in violation of Chamber Rule II.B.

BY THE COURT:

/S/ Donetta W. Ambrose

Donetta W. Ambrose,
Chief U. S. District Judge